

**IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF ALABAMA  
NORTHERN DIVISION**

<b>MELVIN LOWE,</b>	)	
	)	
<b>Plaintiff/Petitioner,</b>	)	
	)	
<b>vs.</b>	)	<b>CIVIL ACTION NO: 2:05-CV-495WKW</b>
	)	
<b>MONTGOMERY COUNTY BOARD</b>	)	
<b>OF EDUCATION; VICKIE JERNIGAN,</b>	)	
<b>MARK LaBRANCHE, TOMMIE</b>	)	
<b>MILLER, MARY BRIERS, DAVE</b>	)	
<b>BORDEN, HENRY A. SPEARS and</b>	)	
<b>BEVERLY ROSS, in their official</b>	)	
<b>capacities as members of the</b>	)	
<b>Montgomery County Board of Education;</b>	)	
<b>and DR. CARLINDA PURCELL, in her</b>	)	
<b>official capacity as Superintendent of the</b>	)	
<b>Montgomery County Board of</b>	)	
<b>Education,</b>	)	
	)	
<b>Defendants/Respondent.</b>	)	

**PLAINTIFF’S RESPONSE TO DEFENDANTS’ MOTION TO STRIKE**

COMES NOW Plaintiff Melvin Lowe (hereinafter “Lowe”), by and through counsel, and responds to DEFENDANTS’ MOTION TO STRIKE.

“The function of a reply affidavit is to answer the arguments made to the position taken by the movant, not to raise new issues or arguments or to change the nature of the primary motion, and a trial court may grant a motion to strike issues raised for the first time in a reply memorandum”. 56 Am. Jur. 2d Motions, Rules and Orders § 27 (2005). Furthermore, in *Giddens v. Equitable Life Assurance Society of the United States*, the 11<sup>th</sup> Circuit has affirmed the trial court’s refusal to consider arguments raised for the first time in defendant’s reply brief. *Giddens*, 445 F.3d 1286 (11<sup>th</sup>

Cir. 2006).

Therefore, as Plaintiff points out in his OBJECTION TO DEFENDANTS' REPLY TO PLAINTIFF'S RESPONSE IN OPPOSITION TO SUMMARY JUDGMENT,<sup>1</sup> Defendants' arguments which are raised for the first time in their reply brief should not be considered by this court with regard to the granting or denial of Defendants' Motion for Summary Judgment.

As such, Plaintiff respectfully requests this court strike the issues raised for the first time in Defendants' reply brief.

**RESPECTFULLY SUBMITTED**, this the 8<sup>th</sup> day of June, 2006.

/s/ William F. Patty

**WILLIAM F. PATTY (PAT038)**

Attorney for Plaintiff Melvin Lowe

**OF COUNSEL:**

BEERS, ANDERSON, JACKSON,

PATTY & VAN HEEST, P.C.

P.O. Box 1988

Montgomery, AL 36102-1988

334-834-5311 (phone)

334-834-5362 (fax)

---

<sup>1</sup> For the sake of brevity, Plaintiff adopts and incorporates his OBJECTION TO DEFENDANTS' REPLY TO PLAINTIFF'S RESPONSE IN OPPOSITION TO SUMMARY JUDGMENT and the arguments therein as if set out fully herein.

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing PLAINTIFF'S RESPONSE TO DEFENDANTS' MOTION TO STRIKE, was electronically filed with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following:

James R. Seale, Esq.  
HILL, HILL, CARTER, FRANCO, COLE & BLACK  
P. O. Box 116  
Montgomery, AL 36101-0116

on this the 8<sup>th</sup> day of June, 2006.

/s/ William F. Patty  
**OF COUNSEL**